

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill may increase the involvement of the department, the courts, and the Guardian ad Litem program in the lives of young adults who were formerly dependent children. This short term increase may result in decreased government involvement and assistance for these young adults in the long term.

Promote personal responsibility –The bill may extend the period of time that a young adult who was formerly a dependent child is eligible to receive government services as he or she is aging out of the foster care system. This extension may result in a decrease in services provided in later years.

B. EFFECT OF PROPOSED CHANGES:

History of Independent Living

Many young adults, a great number of whom have grown up in foster care, lose the support they received while in care until their 18th birthday. Without the support of a family, they are on their own to obtain further education and preparation for employment, as well as health care, mental health care, and housing. Young adults in the foster care system often lack the guidance, support, and training, that are necessary to live independently upon achieving emancipation.¹ They encounter tremendous obstacles that put their emotional, economic, and personal security at risk.

“Aftercare” is defined as the period of time following discharge from foster care when young individuals who have been preparing for self-sufficiency while in care must begin to practice the skills they have been working to master. Aftercare services are typically defined as a system of services and resources designed for those youth 16-21 years of age who are living in an independent living arrangement. Historically, aftercare services have been difficult and challenging to provide, many times because these youth have been “relegated to an out-of-sight, out-of-mind status.” It is now commonly accepted that it is vitally important that aftercare services begin while the child is still in care.²

Federal funds for independent living initiatives were first made available under the Consolidated Omnibus Budget Reconciliation Act of 1985. This act authorized funding to states to establish independent living initiatives to assist eligible youth 16 years of age and older to make the transition from foster care to independent living.³ A total of \$45 million was authorized for the program, with state shares being based on the number of children/youth in care.⁴ While each state was able to determine the nature and scope of their independent living program, federal guidelines recommended specific program components, including GED or vocational training, daily living skills, job readiness and employability skills, and assistance obtaining higher education.

¹ *Independent Living Minimum Standards Recommended for Children in Foster Care*, Office of Program Policy Analysis and Government Accountability, Report No. 04-78 (Nov. 2004).

² See The John H. Chafee Foster Care Independence Program, Aftercare Services, The University of Oklahoma, National Resource Center for Youth Development, 2003.

³ The Independent Living Program was initially authorized by Public Law 99-272, through the addition of section 477 to Title IV-E of the Social Security Act.

⁴ Funding for the independent living program was determined on an annual basis until Congress passed the Omnibus Budget Reconciliation Act of 1993, which permanently reauthorized the program effective October 1, 1992. This permanent reauthorization allows funding to be recurring without any further action from Congress. See P.L. 103-66.

John H. Chafee Foster Care Independence Program

In a further effort to increase services and strengthen state programs for teens in foster care, Congress passed the Foster Care Independence Act of 1999, which was signed into law as the John H. Chafee Foster Care Independence Program.⁵ The law significantly improved the ability of states to achieve the national goals of safety, permanence and well-being for youth and young adults impacted by the foster care component of the child welfare system.⁶ This new federal law doubled appropriations nationally and increased Florida's allocation substantially, from \$990,074 to \$5.9 million for the first year of the new funding, up to \$7.9 million for the federal fiscal year (FFY) 2005.⁷

The Chafee Program legislation included provisions that:

- Doubled the Federal Title IV-E independent living funding nationwide to \$140 million;
- Required states to make services available to youth up to 21 years of age;
- Required states to serve youth younger than 16 years of age for the first time;
- Permitted states to use up to 30% of their allocation for room and board costs and for services for youth ages 18-21 who leave foster care on or after 18 years of age;
- Allowed states to provide Medicaid coverage to youth 18-21 years of age who leave foster care;
- Increased the limit on youth savings accounts from \$1,000 to \$10,000 so that youth in foster care can save and still be eligible for Title IV-E foster care benefits;
- Required states to develop outcome measures to assess state performance;
- Required states to use Title IV-E funds to train adoptive/foster care parents, workers in group homes, and case managers to help them address issues confronting adolescents preparing for independent living; and
- Authorized additional funds for adoption incentive payments to states that increased the number of children adopted from foster care.

Education and Training Vouchers

In 2002, Title IV-E of the Social Security Act, related to independent living services, was amended to provide for vouchers for education and training, including postsecondary education and training for youths aging out of foster care.⁸ Conditions applying to state educational and training voucher programs under this legislation include, but are not limited to, the following:

- Vouchers may be available to youths otherwise eligible for services under the state independent living program;
- Youths adopted from foster care after attaining age 16 may be considered to be youths otherwise eligible for services under the state program;
- States may allow youths participating in the voucher program on the date they attain 21 years of age to remain eligible until they attain 23 years of age, as long as they are enrolled in a post secondary education or training program and are making satisfactory progress toward completion of that program;
- Vouchers provided for an individual may be available for the cost of attendance at an institution of higher education⁹ and shall not exceed the lesser of \$5,000 per year or the total cost of attendance; and
- The amount of a voucher under this section shall be disregarded for the purposes of determining the recipient's eligibility for, or the amount of, any other federal or federally

⁵ Pub.L. 106-169; Ben Graf, *Foster Care Independence Act—1999*, National Resource Center for Foster Care & Permanency Planning (May 2002), available at http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/information_packets/foster_care_independence_act-pkt.pdf (last visited April 1, 2005).

⁶ Pub.L. 106-169.

⁷ The grant period for FFY 2005 is 10/01/2004 – 9/30/2006. The amount appropriated for this grant period is a decrease from the amount of funding for FFY 2004, which was \$8.2 million.

⁸ Pub.L. 107-133.

⁹ See 20 U.S.C.A. 28, ss. 1001-03.

supported assistance, with some exceptions.

The federal budget earmarked \$42 million for Chafee Independent Living Education and Training Vouchers for FFY 2003. Florida's share of that initial funding was \$2.4 million.¹⁰

Florida Law

With the passage of the federal law and increased available funding, the Florida Legislature enacted legislation in 2002 that established a new framework for independent living transition services to be provided to older youth and young adults. Specifically provided for was a continuum of services designed to enable older foster children who are 13 to 17 years of age, and young adults 18 to 23 years of age who were formerly in foster care, to develop the skills necessary to successfully transition into adulthood and self-sufficiency. Service categories established include the following:

- **Pre-independent living services**, which include life skills training, educational field trips and conferences for children in foster care who are 13 and 14 years of age;¹¹
- **Life skills services**, which include independent living skills training, educational support, employment training and counseling for children in foster care who are 15, 16, and 17 years of age; and
- **Subsidized independent living services**, which are services provided in living arrangements that allow children who are 16 and 17 years of age to live independently of adult supervision under certain specified circumstances.

A category of services for young adults formerly in foster care was also created to provide services, based on the availability of funds, which included aftercare support services, the Road-to-Independence Scholarship Program, and transitional support services. In addition, young adults who are awarded a Road-to-Independence Scholarship are exempt from the payment of tuition and fees for state universities, community colleges, and certain postsecondary career and technical programs¹² and retain their Medicaid eligibility.¹³

In spite of the 2002 legislation, questions continued to be raised as to whether adequate services were being provided in a timely manner, whether available funding was sufficient and being well spent, and whether the department and the community-based providers were complying with statutory requirements for the program. During the 2004 legislative session, provisions related to independent living transition services were amended in an attempt to address ongoing concerns, particularly those related to the provision of services. As a result of that legislation, current law specifically:

- Requires DCF to conduct a pre-independent living assessment and conduct annual staffings for foster children 13 through 14 years of age;
- Requires DCF to conduct an independent life skills assessment and conduct semi-annual staffings for foster children 15 through 17 years of age;
- Requires that information regarding independent living needs and services must be provided to the court at the time of each judicial review for all youth between 13 and 17 years and requires the court to consider at these reviews the adequacy of the youth's preparation for independence. During the two reviews that occur between a child's 17th and 18th birthdays, the department must provide written verification to the court that the child has been provided specified information and documents.¹⁴

In addition, the Office of Program Policy Analysis and Government Accountability (OPPAGA) was directed to recommend minimum system standards related to the provision of independent living services. The OPPAGA report, issued in November 2004, contains minimum standards for

¹⁰ The amount appropriated for FFY 2005 is \$2.6 million, a decrease from the FFY 2004 amount of \$2.7 million.

¹¹ Section 409.1451(4), F.S.

¹² Section 1009.25(2)(c), F.S.

¹³ Section 409.903(4), F.S.

¹⁴ Section 409.1451, F.S.

independent living services that were identified through reviews of literature and discussions with stakeholders, including foster youth, foster parents, advocates, DCF officials, and community-based care providers that administer and deliver independent living services to foster youth.¹⁵ The recommendations were organized into eight areas: life skills, housing, education, employment, health, aftercare and transitional services, training, and data collection and evaluation.¹⁶

The same legislation directed the Auditor General to conduct an audit of the independent living program. The audit primarily covered the period October 2002 through September 2004 and had as one of its objectives to determine whether the department's assessment process of clients' needs was effective and appropriately documented. The report, issued in February 2005, disclosed at least one finding related to timely assessment and service provision:

The districts and Community-Based Care (CBCs) agencies did not always complete the required skills assessments for teens ages 13 up to 18, nor document that the Independent Living Transition Services (ILTS) Program services were provided to the teens. Furthermore, the department has not promulgated rules,¹⁷ or established written policies and procedures, addressing the provision of ILTS Program services to teens ages 13 up to 18.¹⁸

Guardian ad Litem Program

The federal government acknowledged the importance of best interests representation for children through the enactment of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974.¹⁹ This legislation required the appointment of a guardian ad litem (GAL) in all proceedings involving child abuse and neglect.²⁰ Florida law also requires the appointment of a guardian ad litem to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal.²¹ The role of the guardian ad litem is unique because the GAL is the only party mandated to advocate solely for the best interests of a child.

Currently, Florida's GAL Program consists of 21 local programs in Florida's 20 judicial circuits.²² As of June 30, 2004, there were 42,565 children in need of a guardian ad litem, and approximately 50% of those children were represented by the GAL program.²³ While there are 4,670 volunteers in Florida serving as volunteers in the program, which represents the highest number of volunteers in any state with a similarly sized and structured program, it is estimated that 14,780 volunteers would be necessary to assign a GAL for every eligible child.²⁴

Also, as of June 30, 2004, of the approximately 1844 children 17 years of age who were eligible to have a GAL appointed, only 715 were actually represented by the program. Due to the fact that there are more children needing representation than there are available volunteers, the GAL program uses a Case Assignment Matrix to determine which children are most likely in need of an advocate.²⁵ Some of the key indicators include age of the child and allegations in the dependency petition. The matrix is a

¹⁵ *Independent Living Minimum Standards Recommended for Children in Foster Care*, Office of Program Policy Analysis and Government Accountability, Report No. 04-78 (Nov. 2004).

¹⁶ *Id.*

¹⁷ These rules were mandated by the 2002 legislation. See Chapter 2002-19, Laws of Florida.

¹⁸ *Department of Children and Family Services Independent Living Transition Services Program, Operational Audit*, Auditor General, Report No. 2005-119 (Feb. 2005).

¹⁹ 42 U.S.C. s. 5106a.

²⁰ Pub. L. 93-247.

²¹ See sections 39.402(8)(c)1., 39.807(2), and 39.822, F.S.

²² *The Voice for Florida's Abused and Neglected Children*, 2004 Progress Report, Statewide Guardian ad Litem Office, available at

http://www.floridaschildrenfirst.org/04_reports/proj/Representation_of_Children/State/FINAL_GAL_2004_Report_Web.pdf (last visited April 1, 2005).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

tool designed to apply objective criteria to the assignment process, however, the protocol for applying the matrix allows program staff to use discretion in making assignments.²⁶ It is known that children eligible for independent living services is one population that is underrepresented by the program due to limited resources and the prioritization of cases favoring younger children.

HB 1319

The bill provides the ability for a dependent child to petition, or for the court on its own motion to retain jurisdiction of the child's case for up to one year beyond the child's 18th birthday. The purpose of the extended jurisdiction is to determine whether a child in the care of the department before reaching adulthood received appropriate aftercare support, transitional support, mental health and developmental disability services, and the Road-to-Independence Scholarship Program. A judicial review is only required if requested by the child or upon the court's on motion. The extended jurisdiction is also intended to meet any federal law requirements pending the issuance of a Special Immigrant Juvenile Visa by the federal government.

The bill also requires that, in the department's judicial review social study report for each judicial review hearing held after a child's 17th birthday, there must be written verification that a child has been provided information about the right to petition for continued court jurisdiction, has been informed of the ability to continue to reside with licensed foster family or group care provider in connection with the Road-to-Independence Scholarship Program, and has been appointed a guardian ad litem by his or her 17th birthday.

The bill also provides for a child who is eligible for the Road-to-Independence Scholarship Program to either continue to live in the foster family or group home in which the child was living at the time of his or her 18th birthday or to reside in another licensed foster home.

This bill shall take effect July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 39.013, F.S., relating to procedures and jurisdiction over dependent children.

Section 2. Amends s 39.701, F.S., relating to judicial reviews for dependent children.

Section 3. Amends s. 409.1451, F.S., relating to independent living transition services.

Section 4. Provides for an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

	2005-06	2006-07
One-time expenses:		

Department	\$301,800 ²⁷	
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²⁶ *Id.*

²⁷ See Fiscal Comments for an explanation of how this number was determined.

GAL	\$186,957 ²⁸
OCO	\$106,650 ²⁹

Recurring expenses:

DCF	\$3,037,276 ³⁰	\$3,113,208 ³¹
GAL	\$2,836,501 ³²	\$2,836,501 ³³

The Department of Children and Families initially estimated that the bill would have a recurring fiscal impact of \$6,886,442 for FY 2005-06 and \$6,476,003 for FY 2006-07.³⁴ However, in a revised Fiscal Note sent to the Senate regarding SB 1314, the companion to HB 1319, the Department indicated that the program would have a recurring fiscal impact of \$1,117,175 for FY 2005-06 and a recurring fiscal impact of \$1,202,778 for FY 2006-07.³⁵

The bill also has the potential to have a fiscal impact on both the courts and the Guardian ad Litem Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The department's March 11 fiscal note estimates a caseload ratio of caseworkers to young adults set at 1:25.³⁶ There is no national standard for caseworkers for young adults, but the national standard for child caseworkers is 1:15.³⁷ The ratio of supervisors to caseworkers is 1:6.³⁸

The Department has given different numbers as the costs per caseworker and staff supervisor. The March 1 fiscal note stated that the costs were \$52,649, and \$69,158, respectively, while the March 11 fiscal note stated that the costs were \$47,619, and \$60,879, respectively. According to a DCF official, the March 1 salary estimates are not correct, and the March 11 estimates are more accurate.³⁹

Finally, there is some uncertainty as to how many new caseworkers and supervisors are needed. The department estimated the recurring salary expenses of the new caseworkers and supervisors based on

²⁸ Statewide Guardian ad Litem Office Fiscal Note re: HB 1319, April 4, 2005.

²⁹ *Id.*

³⁰ See Fiscal Comments.

³¹ *Id.*

³² GAL Fiscal Note.

³³ *Id.*

³⁴ Department of Children & Families, Staff Analysis and Economic Impact (Mar. 7, 2005).

³⁵ Department of Children & Families, Fiscal Note (Mar. 11, 2005).

³⁶ March 11 Fiscal Note.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Conversation with Department of Children & Families, April 1, 2005.

an estimate of the number of young adults who would receive services.⁴⁰ The department assumes that in most cases, if the child does not request an extension of jurisdiction, the court will extend jurisdiction on its own motion.⁴¹ This assumption, that essentially every young adult will come under extended jurisdiction, results in a need for caseworkers for approximately 1,143 18-year-olds.⁴² For the senate companion bill, which does not allow the court to extend jurisdiction over young adults on its own motion, the department has estimated that approximately one-third of the eligible young adults will request an extension of jurisdiction, and therefore it would need only 21 caseworkers and 2.5 supervisors.⁴³

The numbers listed under the recurring expense heading of this bill use the lower March 11 figures for the costs of caseworkers and supervisors, while placing the number of caseworkers and supervisors at the high end, by assuming that DCF will supervise all 1,143 eligible 18-year-olds, which results in a need for 46 caseworkers and 7 supervisors. The department also indicates that there will be an additional need for six caseworkers to perform licensure and recruitment functions, and one supervisor for those caseworkers.⁴⁴ The stated recurring expenses include this additional staff requirement.

The non-recurring expenses were based upon the estimate that 60 total new staff will be required, including 8 supervisors and 52 caseworkers, with a non-recurring expense of \$5,030, for each worker.⁴⁵

The Department of Children and Families Fiscal Note of March 11, 2005, assumes the following:

- That foster parents can be recruited to care for young adults requesting licensed placement;
- That no additional costs are included for attorneys or court;
- That no additional costs are included for mental health services;
- That since there is no history that can be used to estimate the number of young adults for which the court would provide extended jurisdiction, it is assumed all eligible 18 year olds would have jurisdiction extended; and
- That 6 new caseworkers would be needed to cover licensure and recruitment functions.

Regarding the GAL's fiscal note, the GAL estimates that this bill will require an additional 58.5 full-time equivalent employees.⁴⁶ The GAL does not believe that it will be able to recruit enough volunteers between now and the effective date of the bill in order to accommodate the estimated 1,129 new cases it expects to undertake in order to represent the entire population of 17-year-olds in foster care.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² March 11 Fiscal Note.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See id.*

⁴⁶ GAL Fiscal Note.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments by the staff of the Future of Florida's Families Committee:

- On line 44, the words "or young adult" should be added after the word "child" to correspond to the status of a petitioner who has turned 18 years of age, but is not yet 19 years of age.
- Lines 44-47 of the bill provide that the court on its own motion, or the child may petition the court to extend the court's jurisdiction for a period of time not to exceed 1 year after the child's 18th birthday. The extension of the court's jurisdiction for up to 1 year is permitted for two specific purposes. It is unclear whether this provision will be beneficial if there are no required review hearings to determine if these purposes have been met.
- Lines 48-53 of the bill specify that the first reason for the extension of court jurisdiction is to determine whether "a child who was formerly in the legal custody of the department immediately before becoming an adult" received appropriate services including "aftercare support, Road-to-Independence Scholarship Program, transitional support" A child who was in foster care immediately before becoming an adult (turning 18 years of age) would not be eligible for any of these 3 specified categories of services. Aftercare support, Road-to-Independence Scholarship Program assistance, and transitional support are only available to young adults who have already reached their 18th birthday and only if funds are available to provide them.
- Lines 57-60 of the bill specify that the second reason for the extension is to meet any federal law requirement related to the granting of Special Immigrant Juvenile Status. HB 809, relating to Special Immigrant Juvenile Status, and reported favorably by the committee on March 23, 2005, contains a provision that provides:

If a petition and application have been filed and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

If both HB 809 and HB 1319 were enacted into law, conflicting statutory provisions would exist.

- On line 52 of the bill, the word "development" should be "developmental."
- Lines 96-101 and 199-204 of the bill are related to placements for those young adults who are eligible for the Road-to-Independence Scholarship Program:

Currently, some young adults ages 18 through 22 are living in their former foster home placements. When the foster parent is willing for the young adult to remain in the home, there are many benefits for the young adult. However, the Department of Children and Families has reported that there have been practice and implementation problems particularly related to foster home licensure, background screening, and board payments. When a child becomes age 18, the department is not authorized to continue making board payments for young adults formerly in foster care. Some foster families choose not to continue to serve as a placement without this financial reimbursement.

- Lines 111-12 of the bill, contain the phrase “has been provided with notice of the court’s continuing jurisdiction for 1 year after the child’s 18th birthday.” This wording implies that that extension of jurisdiction is automatic. In fact, the bill provides that an extension only occurs upon the court’s own motion or by petition from the child or young adult. The same implied automatic extension occurs on lines 14-15 of the title.
- Lines 115-16 of the bill adds verification that a child in foster care has been appointed a guardian ad litem by his or her 17th birthday to the information that must be included in the department’s judicial review social study report for judicial review hearings that are held subsequent to a child’s 17th birthday:

Currently, section 39.701(6), F.S., requires the department to include written verification that a child in foster care has been provided with specified documents and information at each judicial review hearing subsequent to the child’s 17th birthday. If the court determines at these reviews that the department has not complied with case plan requirements or statutory requirements related to the provision of independent living services, it can issue an order to show cause. If cause is shown for failure to comply, the court must give the department 30 days within which to comply and, on failure to comply with this or any subsequent order, the department may be held in contempt.

Since statutory requirements for a case plan do not include the appointment of a guardian ad litem, and the scope of independent living transition services do not include the requirement to appoint a guardian ad litem, the provision of lines 115-116 of the bill appear to be inconsistent with other sections of the statutes. In addition, it may put the department in a position of justifying cases in which no GAL has been appointed even though it has no control over those appointments.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A.